

State of New Mexico
County of Sandoval
Thirteenth Judicial District

Kenneth and Kathleen DeHoff,
Appellants

vs.

No. D-1329-CV-2023-1382

Linda Gallegos in her role as Sandoval County Assessor
Appellee

Motion to Dismiss Appellee Objection and Completion of Briefings of November 17 due to improper service

On November 17 Appellants received Three communications via email from Appellees. This motion is directed to all three filings: Appellee's Objection to Appellant's Completion of Briefing of their Statement of the Issues; Appellee's Completion of Briefing on Motion to Strike Appellant's Statement of the Issues; and Appellee's Completion of Briefing on Motion for More Time to File Appellee Response. These filings have not been executed within the bounds of NMRA 1-005.2 (C) NMRA and as such are not properly filed, providing no jurisdiction for the court to consider them.

Additionally, Appellants directly address the specious assertions of Appellee which appear in their completion of briefing of motion to strike and explain the specious nature of Appellee Claims.

"The DeHoffs state they are not required to comply with the formatting requirements of Rule 1-100 because they filed documents electronically under Rule 1-005.2, NMRA. But the DeHoffs filed their statement of issue by e-mail-which is not the electronic filing as contemplated by the rules. Rule 1-005.2(A)(3), NMRA, speaks of "the electronic filing system approved by the Supreme Court for use by the district courts to file and serve documents by electronic transmission in civil actions." The DeHoffs appear pro se and "[s]elf-represented parties are prohibited from electronically filing documents. Rule 1-005.2(B)(1), NMRA. Attorneys are required to use the electronic filing system for civil cases. LR 13-208, NMRA. The DeHoffs reading of Rule 1-100, NMRA, would mean that virtually no filings would need to comply with the formatting requirements of that rule. "There is no surer way to misread any document than to read it literally," wrote Learned Hand. Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944) (Hand, J., concurring). The rules must be read as a whole, not in isolation. See State v. Davis, 2003-NMSC-022, ¶ 12, 134 N.M. 172, 74 P.3d 1064 ("All of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain legislative intent.") It is illogical that the preface to Rule 1-100, NMRA, makes the body of that rule superfluous. "

Three assertions were made in the above brief, all of which are without merit:

- (1) Rule 1-100 applies to Appellant Statement of the Issues even though said document was filed electronically.

This statement continues to be incorrect – the explicit exception of 1-100 NMRA to 1-005.2 NMRA filings unambiguously exempts electronically filed documents from this rule: *"Except exhibits and papers filed by electronic transmission pursuant to Rule 1-005.2 NMRA of these rules"*. Further, Appellants reiterate the court's stated desire to hear cases on the merits and technical gaps to niceties of pleadings are to be routinely tolerated WAKELAND V. NEW MEXICO DEP'T OF WORKFORCE SOLUTIONS, 2012-NMCA-021, 274 P.3d 766 ¶9 *"that it was not holding that "any particular nicety of pleading or precision of drafting is required,""*. Finally Appellants note from 1-005.2 NMRA(C) that concerns about legibility of the Statement of the issues should have been raised by Appellee no later than October 19th with an exception to 1-005.2 NMRA and not on October 26th with a motion to strike: *"If within two (2) days after service by electronic transmission, a party served by electronic*

transmission notifies the sender of the electronic transmission that the pleading or paper cannot be read, the pleading or paper shall be served by any other method authorized by Rule 1-005 NMRA designated by the party to be served."

(2) Filing by "e-mail is not the electronic filing as contemplated by the rules."

Appellee's lack of candor in selectively and speciously misstating 1-005.2(A) NMRA, in a manner similar to Appellee's misstatement of 1-100 NMRA, is shown on this matter by the complete rule definition and the entirety of section C which is the most relevant section for this argument. The plain text of the entirety of 1-005.2 NMRA clearly states the rule applies to all electronic transmissions, not just EFS.

1-005.2(A) NMRA Definitions

(1) "electronic transmission" means the transfer of data from computer to computer other than by facsimile transmission.

(2) "document" includes the electronic representation of pleadings and other papers; and

(3) "EFS" means the electronic filing system approved by the Supreme Court for use by the district courts to file and serve documents by electronic transmission in civil actions.

1-005.2(C) Service by Electronic Transmission.

Any document required to be served by Rule 1-005(A) NMRA may be served on a party or attorney by electronic transmission of the document if the party or attorney has agreed to be served with pleadings or papers by electronic mail or if the attorney for the party to be served has registered with the court's EFS. Documents filed by electronic transmission under Paragraph A of this rule may be served by an attorney through the court's EFS, or an attorney may elect to serve documents through other methods authorized by this rule, Rule 1-005 NMRA, or Rule 1-005.1 NMRA. Electronic service is accomplished when the transmission of the pleading or paper is completed. If within two (2) days after service by electronic transmission, a party served by electronic transmission notifies the sender of the electronic transmission that the pleading or paper cannot be read, the pleading or paper shall be served by any other method authorized by Rule 1-005 NMRA designated by the party to be served. The court may serve any document by electronic transmission to an attorney who has registered with the EFS under this rule and to any other person who has agreed to receive documents by electronic transmission.

(3) Appellants appear Pro-Se and are prohibited from electronically filing documents

Appellants are familiar with the pro se procedures of the 13th District Court due to an unrelated appeal in 2021. At that time, during the Covid Pandemic, Appellants were encouraged by the court to file everything electronically in order to reduce 'contact'. At the initiation of this Appeal, Appellants did query the court clerks as to what filing mechanism they should use and were instructed to use electronic filing. For the benefit of Appellee who failed to do his due diligence against his own claim, resulting in another specious and incorrect assertion, we include Audrey Garcia, Court Manager II's acknowledgement of this local court rule as Attachment 1.

A disadvantage Appellants have being Pro Se, they are not as fully informed of the vast body of rules as the Appellee's Representative is, or at least should be. Appellants note in researching 1-005.2 NMRA, a fundamental rule for filing, a failure by Appellee to abide by Section C. Specifically 1-005.2(C) NMRA requires the Appellee to have an agreement with Appellants to accept filings via email: ***"Any document required to be served by Rule 1-005(A) NMRA may be served on a party or attorney by electronic transmission of the document if the party or attorney has agreed to be served with pleadings or papers by electronic mail or if the attorney for the party to be served has registered with the court's EFS."***

Appellants note the there is no such agreement in place, nor has any effort been undertaken to obtain such an agreement from us, which we believe invalidates the following filings by Appellee as being improperly served:

September 26 Notice of Cross Appeal
September 26 Motion to Strike Appeal
October 3 Petition for Writ of Certiorari
October 4 Response to Appellant Motion to Dismiss Cross Appeal
October 17 Response to Appellant Notice of Failure to Produce the Record
October 17 Completion of Briefing for Petition of Writ of Certiorari
October 26 Motion to strike Appellant Statement of the Issues
October 26 Motion for more time to file Appellee Response
November 17 Objection to Appellant Completion of Briefing for Statement of the Issues
November 17 Completion of Briefing of Motion for more time
November 17 Completion of Briefing of Motion to Strike Appellant Statement of the Issues

Appellants are not interested in pursuing superfluous matters before the court, nor are Appellants interested in tolerating any more improper and specious motions by Appellees. Appellants are ready to acknowledge an agreement, if offered, by Appellees per 1-005.2(C) NMRA that facilitates efficient resolution of their appeal on the merits, without additional detractive delaying tactics by Appellees. Appellants leave the disposition of the propriety of all documents served prior to November 17 to the judgement of the court, but it is certain the documents served on November 17 or subsequent to that cannot be considered properly served until an agreement between Appellee and Appellant is in place. Appellants ask the court to dismiss the Objection and two completions of briefing of November 17 and require their proper service.

We certify that on 11/22/2023 we did also provide this document to Appellee's legal representative

Kenneth and Kathleen DeHoff

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Attachment A

Good morning Ken,

All filings are still accepted by pro se individuals through our email. This has not stopped since the pandemic and from my understanding will continue as is.

Audrey Garcia

Court Manager II

Thirteenth Judicial District Court

Sandoval County

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On Fri, Nov 17, 2023 at 2:53 PM ken <ksdehoff@comcast.net> wrote:

Audrey:

The berdisseuedocs is working fine for me but I have a question about its use. Can you give me some order or input from the court that says it is ok to use as a pro se filer? I used it initially in 2021 and at that time the court was handing out a small slip of paper explaining the use for online filing during covid. And now during another case I had asked the clerks at the office if this practice was still in place and they confirmed it was – that I am still permitted and encouraged to file online.

I ask because the Sandoval county attorney is challenging my filings as being invalid because I am doing them electronically – a real mess for me if it turns out to be the case!

Thanks Much for your help

Ken DeHoff